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INVESTIGATIVE REPORT

TO: Thomas C. Shanahan, Senior Vice President and General Counsel

FROM: Womble Bond Dickinson (US) LLP

DATE: October 28, 2019

On Saturday, October 26, 2019, we were asked to finalize and submit this report by October 28, 2019. This reflects information obtained through that date, but as noted some investigatory issues remain outstanding.

Executive Summary

Beginning on Sunday, September 29, 2019 at 9:08 p.m. through 10:04 a.m. on Monday, September 30, 2019, various members of the University of North Carolina System office, including Interim President Dr. William L. Roper, and the East Carolina University (“ECU”) Board of Trustees received a series of emails from johnqpublicatecu@gmail.com (the “Emails”) regarding allegations about ECU Interim Chancellor Dan Gerlach (“Gerlach”). One email included a narrative and a Dropbox link to photos and videos (the “Images”, which are attached as Exhibit A) of Gerlach in at least one bar.² This email’s accompanying narrative made several allegations about Gerlach’s behavior that night, including that Gerlach engaged in sexual conduct in public and made inappropriate remarks. Several media outlets also received emails, which

² As of the morning of October 1, 2019, this Dropbox link had been deactivated and could no longer be accessed. We did not have access to this link when active.



included some or all of the Images. This Firm was contacted around September 30 and subsequently engaged by the Board to conduct an investigation into the events of September 25 (and 26), as well as the other claims about that night, as alleged in the Emails.

This Report concludes that the specific allegations contained in the Emails are largely false. However, Gerlach did go to several bars in downtown Greenville on the evening of Wednesday, September 25, 2019. Based upon the information available to us, he did not engage in any inappropriate sexual conduct while there or make inappropriate remarks as previously recounted in the Emails. Although estimates of how much Gerlach drank that night vary, Gerlach probably consumed between seven and ten drinks over the course of approximately six hours spent at four different locations. He then drove himself home at approximately 2:10 a.m.

Scope of Investigation

The investigation consisted of a review of Interim Chancellor Dan Gerlach's actions on or around the evening of September 25, 2019, including the facts and circumstances under which he was filmed and photographed at one or more bars in Greenville on September 25, and any related observations pertinent to his fitness for the role of Chancellor. This includes a review of how the allegations surrounding these actions became known to the members of the UNC Board of Governors and System Office, the ECU Board of Trustees, and media outlets. This Firm was not asked to make any recommendations regarding personnel actions.³

Materials Considered

This Report was based upon interviews with 35 witnesses, who are listed in confidential Exhibit B. These witnesses included the owners of the bars Gerlach visited that night, employees of those bars, and numerous eyewitnesses. We interviewed Gerlach on two occasions. We reviewed surveillance footage from Sup Dogs, which was the only business establishment that, to our knowledge, had footage still available from the evening. We obtained data from Gerlach's phone. We have reviewed other videos in the relevant area (we have filed a petition seeking to receive street footage directly from the City of Greenville). We listened to three radio interviews of Gerlach (and others). Finally, we reviewed multiple emails, text messages, news articles and numerous social media posts.

³ At the time submission of this report was requested, we were advised that Gerlach was resigning as ECU's Interim Chancellor, effective October 26, 2019.



Findings

I. Chronology of Times and Locations

A. Wednesday, September 25, 2019

Gerlach held a number of meetings during the day on Wednesday, September 25, 2019. Here is the approximate timeline of his activities that evening beginning at 5:00 p.m.:

5:00 p.m.: Gerlach gives an interview to Troy Dreyfus on Pirate Radio Live (at the radio station) to discuss the status of ECU.

6:00 p.m.: Gerlach drives to Cypress Glen, a retirement community in Greenville, where he gives a presentation to approximately 125 attendees. He eats a large prime rib dinner served with bread, vegetables, and dessert. No alcohol is served. Dr. Ron Mitchelson (“Mitchelson”), Provost and Vice-Chancellor at ECU, attended this event and confirmed these details.

7:30 p.m.: Gerlach drives to his temporary residence at 1201 East 5th Street in Greenville (about 1.1 miles away from Cypress Glen).

8:00 p.m.: After changing and speaking on the phone with his wife (who was out of town), Gerlach drives from his residence to Christy’s Euro Pub, a local restaurant in downtown Greenville (approximately 0.4 miles away from his residence). Gerlach describes his motivation for going out as because he had events to attend on the remaining nights of the week, and his wife, whom he describes as very private and uncomfortable being recognized in public, was out of town. Gerlach states he is committed to being visible in the community, which includes patronizing local businesses. At Christy’s, Gerlach has a pint of a Session IPA and sends a photo of his beer to Troy Dreyfus captioned “recuperating.” He does not eat any food.

9:15 p.m.: Gerlach drives from Christy’s to Sup Dogs, another restaurant in downtown Greenville (approximately 0.4 miles from Christy’s). He enters alone at 9:23 p.m. and sits at the bar. At Sup Dogs, Gerlach meets three an off-duty law enforcement officer (the “Officer”), a former Marine (the “Marine”), and the Marine’s friend (the “Friend”) Gerlach has several drinks. He does not eat any food.



10:40 p.m.: Gerlach, the Officer, the Marine, and the Friend leave Sup Dogs together and walk to Club 519, which is two blocks away. There, Gerlach speaks to a he knew and friend (the Friend”). He also encounters and (the “Photographer”) Gerlach has several drinks.

11:00 p.m. -1:00 a.m.: While in Club 519, Gerlach is approached by a woman with tattoos wearing a blue Overton’s shirt (the “Blue-Shirted Woman”). The Photographer takes several pictures of the Blue-Shirted Woman interacting with Gerlach.

1:15 a.m.: Gerlach leaves Club 519 and walks with the Officer to 5th Street Distillery and Annex (“5th Street Annex”), which is less than 1 block away. The and the Photographer also go to 5th Street Annex around that time. The owner of 5th Street Annex buys Gerlach a Bud Light. Gerlach is videotaped dancing with two young women.

1:55 a.m. Gerlach leaves 5th Street Annex and gets in a vehicle as a passenger. He reports that, once home, he realized he left his house keys in his vehicle, and walked to return to the vehicle.

2:10 a.m.: Gerlach walks to his car on 5th Street, which is parked near Sup Dogs. He drives 0.5 miles down 5th Street to his residence.

B. Thursday, September 26, 2019

7:45 a.m.: Gerlach attends an ECU Physicians Board meeting at the medical school. This is his first calendar appointment for the day. He maintains a regular business schedule.

12:07 p.m.: The video of Gerlach dancing from the previous night first appears on Instagram.

12:30 p.m.: The Photographer, who works part-time at a local restaurant, shows the photos to a co-worker and, while doing so, is overheard by local attorney and ECU adjunct instructor Matthew Davenport, who is having lunch at the restaurant. Pitt County Superior Court Judge and ECU Board of Visitors member Jeffrey B. Foster joins M. Davenport at the restaurant. Foster has the Photographer transfer the photographs and video in the Photographer’s possession to Foster’s iPhone.



3:40 p.m.: Jeannine Hutson (“Hutson”), Interim Chief Communications Officer at ECU, receives a concerned text message from one of ECU’s Vice Chancellors, who had seen the video posted to social media of Gerlach dancing with two young women.

4:00 p.m.: Hutson has a “good discussion” with Gerlach about the video and tells him that he needs to “tone it down a little.” Gerlach also confirmed that this discussion occurred.

C. Saturday, September 28, 2019

That night, ECU Board of Trustees member Robert Moore reports that he interacts with one or two people, including someone who visits his home, who express concern about the photographs of Gerlach. Moore tells ECU Board of Trustees Chairman Vernon Davenport (“Vern Davenport”) about this on the afternoon of Sunday, September 29, 2019.

Olivia Ruth Roberson⁴ reports that on this day (or possibly earlier), two “investigators” interview her to determine if she was the woman pictured in the photographs taken of Gerlach at Club 519. She tells them she is not the person in the pictures.

D. Sunday, September 29, 2019

12:55 p.m.: Hutson receives a voicemail message from a reporter at WITN, Greenville’s local NBC affiliate. The message says that WITN obtained several photos of Gerlach and wants a statement about them.

1:00 p.m.: When the WITN reporter could not reach Hutson, she apparently attempted to reach then-Board of Governors Chairman Harry Smith. Smith receives a text message from that reporter requesting a comment on the photos.

1:22 p.m.: Smith sends a group text message saying that he has “gotten call after call from upset parents, faculty and staff that are very angry” about the story of Gerlach being out at bar. This text message is sent to Dr. Roper, Thomas Shanahan, as well to as several members of the Board of Governors (Randy Ramsey, Wendy Floyd Murphy,

⁴ Although Roberson is not affiliated with the System, her name is included here because she is mentioned by name in the Emails.



Temple Sloan, and Anna Spangler Nelson). In a subsequent text, Smith says that two members of the ECU Board of Trustees had also just called him.

2:10 p.m.: Hutson speaks with Dawson, and Dawson agrees to send Hutson the photos. Hutson receives an email from Dawson containing nine photos (no videos). These are photos taken by the Photographer in Club 519. Hutson sends the photographs to Gerlach, ECU Interim Chief of Staff Dr. Christopher Locklear, and UNC System Vice President of Communications Earl Whipple.

2:35 p.m.: Davenport speaks with his friend and fellow attorney, Peter Romary. Their conversation includes discussion of the Images. Romary also speaks with Foster at some point during the day, although Romary is unsure if he discussed the Images with Foster.

4:35 p.m.: After conferring with several members of the ECU and UNC System staff, Hutson publishes a statement regarding the photos as a response to a media inquiry. This statement is attached as Exhibit C. The statement includes a quote from Gerlach. Around this time, Hutson also hears from several other media outlets, including other local Greenville TV stations and the Daily Reflector (Greenville print newspaper). Hutson continues to hear from other news organizations throughout the evening, such as WBTV in Charlotte and the East Carolinian (ECU's student newspaper).

Over the course of the afternoon and evening, Roper informs Gerlach that he will be placed on administrative leave while an investigation is conducted. This information is also conveyed to Hutson. Gerlach speaks with Vern Davenport and ECU Board of Trustees Vice-Chair Fielding Miller.

6:20 p.m.: Troy Dreyfus (the host of Pirate Radio Live) forwards to Smith and ECU Board of Trustees members Phil Lewis and Robert Moore an email from johnngpublicatecu@gmail.com. This email is attached as Exhibit D. The email mentions a "handjob." It is similar to, but different from, the email later sent at 9:08 p.m. to the entire ECU Board of Trustees. The email includes a Dropbox link to the Images.⁵

6:21 p.m.: Smith sends a series of text messages to Wendy Floyd Murphy, Randy Ramsey, Pearl Burris-Floyd, and Dr. Roper. The message includes the email in Exhibit D. Smith said he believes that "someone has been building a case for sometime and

⁵ While we have seen the email, we have not been able to review what was in the Dropbox link.



then dropped it.” He also noted that the “videos are posted on Instagram under ‘old row Ecu’” and that he had been told Gerlach was “back downtown last night” (i.e. the night of September 28).

8:30 p.m.: Roper informs Mitchelson that he will serve as Acting Chancellor while Gerlach is on administrative leave.

9:08 p.m.: Dr. Roper, as well as the entire ECU Board of Trustees, receive an email from johnqpublicatecu@gmail.com (the “First Email,” attached as Exhibit E). The First Email alleges that “WITN only published a couple of pictures and a couple of videos that were out of context.” The Email then makes several allegations regarding Gerlach’s conduct and includes a Dropbox link to a folder containing 10 still images and 3 videos of Gerlach (the Images).

E. Monday, September 30, 2019

7:30 a.m.: Gerlach calls Mitchelson to apologize for his actions. According to Mitchelson, Gerlach is “obviously remorseful.”

8:47 a.m.: Henry Hinton, a local radio host and former member of the Board of Governors and the ECU Board of Trustees, receives an email from johnqpublicatecu@gmail.com (the “Second Email,” attached as Exhibit F). The Second Email includes an additional narrative about Gerlach’s actions at Club 519 and specifically states that the woman in many of the photos with Gerlach is a “known prostitute.” Hinton forwards this email to Vern Davenport and Fielding Miller.

10:04 a.m.: Unknown individuals receive another email about Gerlach from johnqpublicatecu@gmail.com (the “Third Email,” attached as Exhibit G). The Third Email alleges that the woman in the photos with Gerlach at Club 519 is Olivia Ruth Roberson. The Third Email includes a link to one of Roberson’s booking photos, along with selected aspects of her criminal record. The Third Email also alleges that Roberson is a known prostitute. The original recipient list of the Third Email has been deleted on the copy we received. The known recipients to us are Robert Moore and Phil Lewis, members of the ECU Board of Trustees. Mr. Lewis forwarded the email to Harry Smith, who provided the Third Email to System Interim President Roper and General Counsel Tom Shanahan.



4:11 p.m.: Gerlach receives a written memorandum confirming that he will be placed on paid administrative leave for up to 30 days while an investigation into the incident is conducted. This memorandum instructs Gerlach to "... not ... be in contact in any way with ... other persons involved in the issue (s) described herein" This is attached as Exhibit H.

F. Tuesday, October 8, 2019

Prior to 1:30 p.m.: Phil Lewis and Robert Moore meet with Gerlach at Lewis' home. When asked about this meeting, Lewis and Moore indicated that they had "conducted their own investigation" into matter.⁶ They indicated that they had gone to Club 519 and also to the restaurant where the Photographer works. They had requested that Gerlach meet with them to give him "support and advice."

II. Allegations from the Emails

A. Alleged Sexual Conduct

The First Email asserts that Gerlach arrived at Club 519 with the Blue-Shirted Woman as his "escort" and that, while in the bar, he "engaged [with her] in activities that a married man would only engage in with his wife, in private." More generally, the First Email alleges that Gerlach "acts inappropriately towards women." As described below, the information obtained to date does not support these allegations.

Findings

1. The First Email's accusation appears to be based on a series of photographs of Gerlach with the Blue-Shirted Woman. Gerlach did not engage in inappropriate contact of a sexual nature with a female in Club 519 on September 25. We interviewed twelve witnesses, male and female, who were present in Club 519 during the time period of the interaction between Gerlach and the Blue-Shirted Woman. No eyewitnesses we interviewed stated that Gerlach engaged in any inappropriate sexual conduct. In the course of our investigation, the only allegations that Gerlach engaged in sexual conduct that evening were made by the author of the Emails and Romary.

2. Gerlach arrived at Club 519 at approximately 10:45 p.m. He, the Officer, the Marine, and the Friend were all carded upon entry. They went to the middle of a long bar that runs the length of the restaurant and ordered drinks. Gerlach met _____ and spoke to _____ for about _____

⁶ We have not found any information indicating that Lewis and Moore either sought or received approval from Dr. Roper or the Board of Governors to confer with Gerlach or to conduct their own investigation of a University matter.



10 minutes. He also spoke to _____ and the Photographer. Gerlach was photographed with others at Club 519, including ECU students who seemed excited to see him out.

3. The Blue-Shirted Woman arrived at Club 519 with a female friend around 11:00 p.m., after Gerlach was already there. This detail was confirmed by every eyewitness we interviewed and directly contradicts the allegation in the Emails that Gerlach arrived with the Blue-Shirted Woman as an “escort.” Once she entered Club 519, the Blue-Shirted Woman was loud and aggressive.⁷ She offered to have sex with the Officer, then took the Officer’s phone. The Photographer was able to get the phone back, which angered the Blue-Shirted Woman. The Blue-Shirted Woman called the Photographer a “piece of sh**.” She then told the Marine and the Friend that she would have sex with them. The Photographer told her to “go on somewhere,” and she responded with something like “Why you gotta be like that?”

4. The Blue-Shirted Woman then went over to Gerlach and grabbed him from behind in a bear hug. She started rubbing herself against him. Gerlach turned and asked if she was OK. The Blue-Shirted Woman continued to press herself against Gerlach as he turned and tried to move away from her, while the Blue-Shirted Woman attempted to maintain an embrace. The Officer, Marine, the Friend, and _____ all described Gerlach as clearly uncomfortable and trying to push the Blue-Shirted Woman away politely. The Marine and _____ remembered Gerlach telling the Blue-Shirted Woman to “calm down” and/or “step back.” Around then, the Photographer went over with one of the other guys and asked the Blue-Shirted Woman: “how much for the whole night?” That appeared to anger her, and she started after the Photographer, cursing and flipping him off. Club 519’s door security person was escorting the Blue-Shirted Woman out of the bar when she punched the Photographer in the face. After being physically removed from Club 519, the Blue-Shirted Woman briefly stayed outside yelling, cursing, throwing her flip flops at the door, and trying to get back inside, before finally walking away. The Marine and _____ estimated that the entirety of Gerlach’s interaction with the Blue-Shirted Woman was two to three minutes. The Photographer took pictures of the interaction to demonstrate how out of control the Blue-Shirted Woman was; other eyewitnesses also reported that she was acting in a seemingly impaired, rude, and obnoxious manner.

5. To our knowledge, the Photographer took all the photos from Club 519.⁸ The Photographer stated he took the photos to protect Gerlach’s reputation in case something was made

⁷ Numerous eyewitnesses recounted the Blue-Shirted Woman’s loud, obnoxious conduct, as well as her asking several people for sex, rubbing her bosom against a male patron other than Gerlach, and initiating numerous interactions. She was reported as unsteady on her feet.

⁸ From our understanding of what was included in the Dropbox link in the First Email, the Dropbox included the Photographer’s nine photos and the video of Gerlach chugging a drink (also filmed by the Photographer). We also believe the link included the video of Gerlach dancing at 5th Street Annex, which had previously been posted online, a screenshot of that video, and a video at Sup Dogs from a different night, for a total of 10 photographs and 3 videos.



of the interaction.⁹ The Photographer's _____ was also in Club 519 that night and confirmed this intent. Additionally, every eyewitness supported this general account of the events with the Blue-Shirted Woman. No eyewitness recounted the events in the way described in the First Email.

6. Although the files in the Dropbox link label certain photos “handjob” and “hair grab,” none of the witnesses provided any support for the claim that these events occurred. Instead, the interaction between Gerlach and the Blue-Shirted Woman lasted only two to three minutes and was non-sexual in nature, on his part anyway. Gerlach reported that his actions were to disentangle himself from the Blue-Shirted Woman, and all eyewitnesses we spoke to corroborated his description.

7. The First Email contains other allegations regarding Gerlach's conduct at Club 519. It asserts that Gerlach arrived with his “escort,” but both eyewitness and video testimony indicate that Gerlach arrived with the three men that he met earlier in the evening at Sup Dogs. The Email states that Gerlach paid for the Blue-Shirted Woman's drinks, but we did not find any indication of him doing so. The First Email also states that the Blue-Shirted Woman was “ejected from the bar because of her conduct towards a bartender.”¹⁰ No eyewitness, including the bartender, referenced the Blue-Shirted Woman being removed for conduct toward the bartender. Rather, the Blue-Shirted Woman's actions were primarily targeted toward the patrons, and she was ejected from the bar after punching the Photographer in the face. Finally, the First Email states that Sup Dogs is a “deception”; however, eyewitness testimony and videotape confirm that Gerlach was there, met the Officer, Marine and Friend there, and then joined them when they went to Club 519.

8. The Third Email alleges that the Blue-Shirted Woman is Olivia Ruth Roberson. The information we obtained does not support this allegation. The Blue-Shirted Woman does not bear any significant resemblance to Roberson. Roberson, for example, is White, whereas several witnesses described the Blue-Shirted Woman as African-American or mixed race. We have yet to

⁹ On October 10, 2019, Board of Governors member Harry Smith sent an email to Board of Governors members Randy Ramsey, Wendy Murphy and Pearl Burris-Floyd. Mr. Smith's email stated that “according to two of the trustees,” the pictures were taken because a _____ “thought it was inappropriate for the chancellor to be there and the actions he was doing were inappropriate.” We spoke to Smith on October 12, and he indicated that this information came from Phil Lewis and Robert Moore, both members of the ECU Board of Trustees. We spoke with Lewis and Moore on October 14, 2019 (they called us together). They indicated that they had done “their own investigation” and visited both Club 519 and the local restaurant where the Photographer works part-time. However, they spoke to no eyewitnesses and did not speak to the Photographer. They did not know where they heard that the photographs were taken because the conduct was inappropriate. Our findings are based on interviews with the Photographer and _____ who were present at the time and whose versions of the events were corroborated by all the other eyewitnesses.

¹⁰ She did offer to have sex with the bartender; however, that was not the basis of her removal from the bar.



identify the Blue-Shirted Woman (or her female companion shown in Exhibit A), but it was not Roberson.

9. Since these events became public, there have been allegations that the Blue-Shirted Woman was part of some “set up” of Gerlach to make him look bad by attempting to engage in (or appear to engage in) sexual acts with him in public. The information we obtained does not entirely rule out that possibility, but it does not confirm it either.

10. Although the First Email’s allegations about sexual behavior primarily focus on the Blue-Shirted Woman, the Email also alleges that Gerlach generally behaves “inappropriately towards women, especially students.” The information gathered does not support this allegation. As stated earlier, no eyewitnesses from September 25 reported any sexual conduct by Gerlach. This includes the two women with whom Gerlach was filmed dancing. These women stated that Gerlach did not touch them inappropriately and did not make them uncomfortable. We are unaware of any complaints against Gerlach regarding inappropriate touching or other sexual behavior toward anyone.

B. Other Alleged Inappropriate Comments

The First and Second Emails allege that, upon entry to Club 519, Gerlach called out, “My wife is out of town so it’s on tonight.” The First Email also alleges that Gerlach stated, “I’m Chancellor Dan, but you can call me Uncle Tom.” We found no information to support either allegation.

Findings

1. No eyewitness heard Gerlach state “My wife is out of town so it’s on tonight.” The people to reference this quote (other than the First Email itself), are Matt Davenport, who claims the Photographer said Gerlach stated these words, as well Foster and Romary. The Photographer, however, did not remember Gerlach stating that phrase. It is true that Gerlach’s wife was out of town. Gerlach confirmed this detail and referenced this as a contributing factor to why he left home on the night of September 25. More specifically, Gerlach explained that his wife is private and does not like to be recognized when they are out in public, so he was more inclined to go out when she was out of town. Thus, although it is accurate that Gerlach’s wife was out of town on September 25, the information we obtained does not support the First and Second Emails’ specific allegation of Gerlach publicly announcing that fact upon arrival at Club 519.¹¹

2. No eyewitness heard Gerlach state, “I’m Chancellor Dan, but you can call me Uncle Tom.” There was, however, a reference to “Uncle Dan” during the evening. When the Officer,

¹¹ During his interview, Gerlach also stated that he has made a point to visit many downtown establishments during his time as Interim Chancellor to be supportive of the greater community. This motivation also impacted his decision to go out on the night of September 25.



the Marine, and the Friend were attempting to convince Gerlach to join them at Club 519, they offered to call him “Uncle Dan,” so as to not draw attention to Gerlach’s presence. Although the Officer, the Marine, and the Friend all independently confirmed this detail, the information we obtained indicates that “the plan” did not last long. Several

recognized Gerlach at Club 519. Thus, although there was talk of “Uncle Dan,” no eyewitness heard any remarks about “Uncle Tom” on the night of September 25, 2019. When asked about the alleged Uncle Tom comment, Gerlach denied it categorically and said that was a racist reference.

C. Alleged Purchase of Alcoholic Drinks for Students

The First Email alleged that Gerlach “buys drinks for people without checking their age.” Gerlach has bought alcoholic drinks for students, both in the past and on September 25, 2019. However, the information we obtained does not support the First Email’s allegation that Gerlach has done so without checking students’ ages.

Findings

1. On the night of September 25, 2019, Gerlach purchased alcohol for [redacted]. However, all [redacted] were over 21, and all were carded. During his interview, Gerlach mentioned buying one drink for each of the [redacted] at Sup Dogs and another drink for each at Club 519. This account generally conforms to the recollections of the [redacted] and the [redacted] although the [redacted]

2. Gerlach may have purchased alcohol for some other ECU students at Club 519, but all were over 21 and were carded by a door security employee upon entry to the bar. Although Gerlach purchased alcoholic beverages for at least two students on the night in question, we have not obtained any information to support the First Email’s allegation that he did so without checking the students’ ages. Additionally, all purchases were with his personal funds. Gerlach paid cash throughout the night and did not use a University credit card.

3. During his interview, Gerlach said he has purchased drinks for students on a few other instances, but only when he knows the students are of legal age. He indicated that, on each occasion, the student was carded by wait staff at the time Gerlach purchased the drink. In response to whether he had previously purchased drinks for any individuals he bought drinks for on the night of September 25, Gerlach only recalled purchasing one student [redacted] a drink before. We do not have any information indicating that Gerlach has deviated from that practice on other occasions.



D. Alleged Public Drunkenness

The First Email alleged that Gerlach “stumbled up” to students on September 25 and, more generally, is “often seen drunk in public.” Most of the eyewitnesses indicate that Gerlach did not appear drunk on the night of September 25; however, one eyewitness indicated Gerlach was “impaired” as he walked from Club 519 to 5th Street Annex. Further, street camera footage appears to show Gerlach impaired and staggering as he leaves Club 519 at 1:16 a.m. He also was somewhat unsteady in walking to his vehicle from his home later in the evening when returning to his car later that evening. We have not found any information supporting the allegation that Gerlach regularly appears intoxicated while in public.

Findings

1. All but one of the eyewitnesses interviewed reported that Gerlach was not drunk. This impression was shared by numerous people who encountered Gerlach throughout the entire evening, including those at Sup Dogs, Club 519, and the 5th Street Annex. Additionally, no eyewitness reported inappropriate behavior by Gerlach consistent with intoxication.

2. One eyewitness, the Officer, reported that on the way from Club 519 to 5th Street Annex, the Chancellor had slurred speech, seemed unsteady on his feet while walking, staggered, and stumbled a couple times. This report is also corroborated in part by the street video camera taken from 1:16 a.m. to 1:17 a.m. The Officer says he urged Gerlach to go home at least twice and offered to call him a ride. Gerlach declined. In the Officer’s opinion, Gerlach was “definitely impaired.”

3. The Officer does not believe he saw Gerlach after Gerlach left 5th Street Annex. Gerlach thinks that he and the Officer may have left together. Gerlach stated he was not intoxicated when he drove home at approximately 2:10a.m.

4. During our first interview, Gerlach stated that he went from Club 519 to 5th Street Annex, where he got a wristband but did not drink. He stated he went to Still Life after 5th Street, where he danced and drank part of a Bud Light that someone purchased for him. During our second interview, Gerlach indicated that the dancing was done at 5th Street. The manager of Still Life had reported to us that Still Life was closed to the public on September 25 after 7:00 p.m. Based on the floor and style of the bar, the video of Gerlach dancing and holding a bottle of beer appears to have been taken at 5th Street Annex. who was at 5th Street Annex around the same time as Gerlach, said that the video of Gerlach dancing was “definitely” taken at 5th Street Annex. Furthermore, in prior conversations held with Jeannine Hutson closer in time to that night, Gerlach stated he went to 5th Street Annex but did not go to Still Life. During a second interview, Gerlach said he might have been confused at our first interview about going to Still Life. Given



the above, we believe that Gerlach confused the locations in our initial interview and did not go to Still Life on September 25. Additionally, when his memory was prompted about getting into an apparent ride-sharing vehicle around 1:55 a.m., which Gerlach did not initially remember, he then pieced together that someone did call a ride-sharing service for him, that he took the ride home, that he then realized he had left his keys in his car, walked back to his vehicle on 5th Street, and then drove home. This seems consistent with street camera footage. Gerlach reports being 90% certain this is what happened. Throughout the process, Gerlach has appeared cooperative. We believe that it is most likely that he was impaired during this timeframe of the evening and did not recall this portion of the evening during his prior interviews. He was, however, able to piece together some of these events when prompted by questions. Gerlach appeared fully cooperative once these questions refreshed his memory.

5. While witnesses, many of whom were drinking at the time, have varying recollections of the drinks Gerlach consumed during the evening, Gerlach had at least several drinks during the night of September 25. He stated during his interview that he had a pint of beer at Christy's, a beer and a "Sup Crush"¹² at Sup Dogs, two beers¹³ and a shot at Club 519, and half a beer at Still Life.¹⁴ The total time period was approximately 6 hours (roughly 8:00 p.m. – 2:10 a.m.). An estimate of Gerlach's total alcohol consumption is described in more detail in Exhibit I.

6. In our first interview, Gerlach estimated he arrived home around 1:00 a.m. In our second interview, he said upon reflection he now believed it was around 2:00 a.m. The facts tend to support the 2:10 a.m. estimated time of departure in his car after walking to it from his home. When we interviewed the young women with whom Gerlach was filmed dancing, one of them shared another video of themselves dancing with Gerlach that night. That new video was time-stamped at 1:35 a.m. Additionally, Gerlach thinks he left with the Officer, and the Officer's Uber receipt home reflects a time of 2:05 a.m. Finally, there is traffic camera footage of Gerlach getting into his car at 2:10 a.m.

7. The Officer reports he believed that Gerlach "definitely" appeared "impaired" while moving from Club 519 to the 5th Street Annex. The Marine and the Friend say they left Club 519 about 20 minutes after the incident with the Blue-Shirted Woman and did not see Gerlach the rest of the night. [REDACTED] and the Photographer, who met Gerlach at Club 519, also went to 5th Street Annex, but Gerlach "caught up" to them while they were already on their way.

¹² According to the bartender at Sup Dogs, a Sup Crush is served in a 17-ounce glass and contains 1.5 ounces of vodka, as well as orange juice, Triple Sec, and Sierra Mist soda.

¹³ The bartender at Club 519 recalled that these beers were 12-ounce pours.

¹⁴ As discussed earlier, we believe this drink was consumed at 5th Street Annex.



8. The Owner of 5th Street Annex saw Gerlach there and said Gerlach was steady on his feet, did not have slurred speech, and did not appear drunk. The Owner said he has “13 years in the bar industry” and “know[s] how to spot a person who has had too much to drink.” Additionally, the two young women with whom Gerlach was filmed dancing at 1:35 a.m. said that he did not appear drunk and did not stumble when around them. Gerlach indicated in his interview that he usually gets up around 4:45 a.m. If accurate, then he would have been awake for approximately 22 hours when seen walking to his car at 2:10 a.m.¹⁵

9. As to the more general allegation in the First Email that Gerlach is “often seen drunk in public,” we did not find any information to support that claim. No one interviewed mentioned having seen Gerlach intoxicated on any prior occasion. The Owner of Club 519 said he had never heard of Gerlach being in the bar before; the same is true of the Owner of 5th Street Annex. The Owner of Sup Dogs indicated that Gerlach had come there regularly, but said that he had never seen or heard about Gerlach acting intoxicated. Therefore, we have not found information indicating that Gerlach frequently appears drunk in public, as the First Email claims. At times on the night in question, we believe Gerlach was exhibiting impairment.

E. Other Information Related to Gerlach’s Fitness to Remain Chancellor

As part of the investigation, we were asked to report on any other facts or circumstances relevant to Gerlach’s fitness to remain in the role of Interim Chancellor. We have identified several additional facts relevant to that request for information.

Findings

1. Although one video appears to show Gerlach chugging a drink we did not find any information indicating this action was part of a drinking game.
2. All information we obtained indicates that Gerlach eventually drove himself home from 5th Street Annex on the night of September 25, 2019. At the outset, Gerlach admitted that he drove home during his interviews, and traffic camera footage shows him getting into his car at

¹⁵ In the course of the investigation, we learned from Gerlach that he drove home that evening. On October 14, 2019, we submitted a request to the Assistant City Attorney for Greenville, NC, asking to review the traffic camera videos. While this firm is not eligible under the statute to view the videos we do not appear in, the Assistant City Attorney advised that we could file a Petition with the court which would require the scheduling of a hearing. Given the timing of (1) this city attorney being out most of that week, (2) no judges scheduled in Pitt County that week due to a judicial conference, and (3) the City also having ten days to release the footage after any order is obtained, we proceeded to complete our report. At this time, we have received a verbal report of the video from the legal representative of Gerlach, who was permitted to review the footage. The City consented to a Petition filed by Peter Romary purportedly on behalf of the Police Benevolent Association and Fraternal Order of the Police. The City then contacted us to indicate that it would consent to a Petition by us for the same footage. We have filed such a petition and are working through that process. We also have asked the City to preserve other footage related to the events under investigation beyond the footage requested by Mr. Romary.



2:10 a.m. In our interview with him, Gerlach asserted that he was not impaired when he drove home. However, in subsequent interviews he indicated he did not remember the full sequence of events that evening.

3. Gerlach has admitted on multiple occasions that he made a mistake on September 25, 2019. He said as much during both radio interviews. During his interview with us, Gerlach also indicated that he “showed poor judgment” in being out “so late past his bedtime.” He expressed regret for the negative attention the incident has brought ECU and the appearance it has given.¹⁶

4. During the investigation, Gerlach was generally helpful and credible. He allowed us to copy data from his phone and showed us relevant text messages. He provided additional information, such as the fact that his evening started with a drink at the restaurant Christy’s, which had not been mentioned in previous media reports and was arguably not in his interest to reveal. He honestly admitted mistakes and facts that were not helpful to him. His testimony about the events of September 25, 2019 were generally consistent with the information we received from other sources, including other eyewitnesses and surveillance cameras.

III. Complaint Receipt and Investigation Developments

A. John Q. Public

Findings

1. The media received an email with approximately 9 photos and 3 videos sometime in the late morning or early afternoon on Sunday, September 29, 2019. Jeannine Hutson found out that WITN had the Images at 12:55 p.m. on Sunday, September 29, when a reporter called her and asked for a comment. The reporter from WITN sent Hutson the photographs at 2:07 p.m., so that Hutson could respond to them on behalf of ECU.

2. Around 4:35 p.m. that day, Hutson published a statement regarding the photos as a response to a media inquiry (Exhibit C). The statement included a quote from Gerlach. By that time, Hutson was getting requests from several other media outlets, including other local Greenville TV stations and the Daily Reflector (Greenville print newspaper).

3. At 9:08 p.m., UNC System Interim President Dr. William Roper, as well as the entire ECU Board of Trustees, received an email from johnqpublicatecu@gmail.com (the First Email, Exhibit E). The First Email alleged that “WITN only published a couple of pictures and a couple of videos that were out of context.” The story published by WITN, however, included most, if not all, of the known Images. Additionally, the reported version did not take the Images

¹⁶ His statement about his resignation expresses similar themes.



out of context. Rather, the allegations contained in the First Email are not supported by the information we obtained, as described in more detail in the above sections.

4. This is not the first time that representatives of the System or ECU have received emails from John Q. Public. The writer of these emails attempts to portray himself or herself as an employee and identifies with faculty, staff, and administration. The writer also indicates he or she may have received a degree from ECU. We are aware that John Q. Public has emailed the System on the following previous occasions: (1) March 27, 2019, when John Q. Public emailed Dr. Roper and Mr. Smith regarding concerns about who would be selected to be ECU's Interim Chancellor and specifically expressed concern that Dr. Virginia Hardy, ECU's Vice Chancellor for Student Affairs, might be selected; (2) March 28, 2019, when John Q. Public emailed Dr. Roper and Mr. Smith to express concern with ECU's finances; (3) March 28, 2019, in a second email discussing concerns with several current and former members of the ECU Administration, including Dr. Hardy, former Chancellor Steven Ballard, Former Board of Trustees member Henry Hinton, and Director of Disability Support Services Stephen Gray; and (4) April 3, 2019, when John Q. Public emailed Dr. Roper, Mr. Smith, and an attorney in the UNC System office with additional concerns about Dr. Hardy.

5. Additionally, on August 23, 2019, John Q. Public emailed members of the media regarding the UNC Hospitals receiving a preliminary denial of re-accreditation. That email to the media attached a confidential memorandum that had previously only been distributed to members of the UNC Board of Governors days before.

6. We attempted to use forensic analysis to determine the owner of the johnqpublicatecu@gmail.com, but were not able to identify the owner. We sent emails to the account, but it appears to now have been shut down. We contacted Google and Dropbox, but they declined to provide any information.

B. Interactions with Board Members During the Investigation

Findings

7. On October 2, 2019, Gerlach met with Vern Davenport. Vern Davenport told Gerlach that the Board of Trustees supported him.

8. When we interviewed Gerlach at 1:45 p.m. on October 8, 2019, we learned that Gerlach had a meeting with ECU Trustees Phil Lewis and Robert Moore that same morning. Gerlach reported that Lewis had asked for the meeting via text. Gerlach responded that "investigators talking to me Tues aft." Mr. Lewis responded "Can robbie and me go by your house or mine Tuesday am?" Gerlach responded "Let me come to you." Mr. Lewis then responded with his home address and "...10 am Tuesday Very confidential... as I know you know... I am



pulling for you.” According to Gerlach, in the meeting they advised him that they were conducting their own investigation into the matter.

9. According to Gerlach, Lewis and Moore offered him “fatherly advice.” They said a kid that worked for Lewis knew Club 519 and some folks that worked there. They told him that he should not go out alone and should not be drinking in bars. Gerlach said John Q. Public “came up” during this discussion. Lewis and Moore told Gerlach that someone had organized the attack on him. They indicated that they had been briefed by the Chair and were hoping the matter would be resolved by Thursday, October 10, 2019.

10. On October 12, 2019 Phil Lewis sent a text message to Randy Ramsey complaining that our investigation was a “waste of time and money”, asking “what the hell is the scope of this investigation?” and stating “Everyone knows [redacted] took the pics ... he works at [named local restaurant] ... ask him if it was a setup ... if not they need to stop this crazy mess.” Lewis left a message for Beth Jones (Womble Bond Dickinson) calling the investigation “ridiculous” and stating that no one was going to review his phone.

11. On October 12, 2019 Robert Moore left a voicemail for Randy Ramsey complaining about Womble attorney Beth Jones contacting him. He stated: “I don’t really have anything to add to her. Unless I’m under investigation, I’m going to let her sit right where she’s at. I don’t think I am. If Bill Roper is on some witch hunt, he’s barking up the wrong tree with me so anyway, I’m going to leave it alone. Let it be what it is and I hope I don’t hear or have any more communications with her...” He added: “I don’t know who took the photos.”

12. On October 14, 2019, Lewis and Moore called Mark Henriques (Womble Bond Dickinson) together. They stated that they had gone to Club 519 and asked around “for about 30 seconds.” Someone told them they thought the photographer was [redacted] who liked Bud Light, [redacted] and worked at a [named local restaurant]. So they went to that restaurant and asked around. They were told that [redacted] who worked there did take the photos and it got “bigger than he expected.” They never spoke to the Photographer. They don’t know his name.

13. Lewis and Moore met with Gerlach on October 8 to make sure he “learned his lesson.” During their meeting, Gerlach told them he drove to Sup Dogs, which surprised them because it is only a 6-block walk from Gerlach’s house and they have seen Gerlach walking around town at night before.

14. Lewis and Moore refused to provide their phones for imaging, stating they had lots of personal information on them. They have not provided text messages from their phones.



15. On October 12, 2019, we spoke with Harry Smith. We asked to schedule an interview. Smith responded he did not have time for an interview, but would talk on the phone. Smith stated that [redacted] who worked at the local named restaurant had taken the photos because he felt the Chancellor was acting inappropriately. He said someone clearly complied the photos after the fact and submitted them. He said this information came from Lewis and Moore. He knew that Lewis and Moore had met with Gerlach. Smith stated that Womble's investigation had been "bungled," that we should not be calling on a Saturday, and that he would not meet with us. He declined to provide his phone for imaging, or provide text messages.

C. Release of the Images

Findings

16. The Photographer [redacted] who works part-time at a local restaurant in Greenville. The next day, Thursday, September 26, the Photographer was working when Davenport came in for lunch. Matt Davenport is a regular at the restaurant. While Matt Davenport was having lunch, the Photographer was telling a co-worker about his interactions with Gerlach the previous night and showing the co-worker the photographs and video he had taken. According to the Photographer, Matt Davenport may have seen the photos and video while the Photographer was showing them to his co-worker.

17. About 20-25 minutes after Matt Davenport started having lunch, Matt Davenport was joined by Foster. The Photographer was unaware of Foster's identity at the time. Matt Davenport had finished his lunch at that point and motioned for the Photographer to come over. The Photographer originally thought that he was being called over to take Foster's order. According to the Photographer, Matt Davenport indicated that Foster was a judge and that the Photographer needed to AirDrop the photographs and video on his phone to Foster. The Photographer complied. The Photographer remembered Foster saying (to the effect of), "This man is trying to become the permanent Chancellor, and we can't let that happen."

18. When interviewed, Matt Davenport confirmed several of these facts. Matt Davenport confirmed that he is a regular at the restaurant and had lunch there on Thursday, September 26. Matt Davenport said that the Photographer was talking about seeing Gerlach out at bars the previous night; Matt Davenport did not believe the Photographer, so the Photographer showed him the photographs on his phone. Shortly afterward, Matt Davenport said he received a text or call from Foster asking to join him for lunch. Matt Davenport reported that Foster had an upcoming meeting with Gerlach and would be interested to see the photos.¹⁷ Matt Davenport called the Photographer over and asked him to show Foster the photos. Specifically, Matt

¹⁷ Gerlach's assistant confirmed that Gerlach was scheduled to meet with Foster on October 1, 2019. This meeting was cancelled after Gerlach was placed on administrative leave.



Davenport thinks he may have said, “Show the judge the photos.” However, contrary to the Photographer’s statement, Matt Davenport denies that Foster got the photos while Matt Davenport was in the restaurant. Matt Davenport said he and Foster left the restaurant at the same time. Matt Davenport said after he got back to his office he saw a missed call from Foster. According to Matt Davenport, Foster wanted to know the name of the Photographer. Matt Davenport said that, when he called Foster back, Foster indicated he had “figured it out” and had gone back to the restaurant. Matt Davenport thinks Foster may have gone back to the restaurant to obtain the photos, but he does not know that for sure

19. Matt Davenport also discussed these events with Peter Romary. Matt Davenport indicated he and Romary were good friends when Romary lived in Greenville. Matt Davenport said that Romary called him on the morning of Sunday, September 29, 2019, but Matt Davenport was in church. Matt Davenport returned the call at approximately 2:35 p.m. that afternoon. Matt Davenport said he spoke to Romary for about 20 minutes. They discussed Gerlach, including his actions on the night of September 25. Matt Davenport specifically remembered mentioning to Romary that Gerlach had said “My wife is out of town, so it’s on.” Matt Davenport told Romary about the photos, and reported that Romary said, “Holy Sh**! This is Big!” Between this call with Romary and his interview with us, Matt Davenport had gotten a new cell phone. As a result, he could not provide an image or text messages. He was, however, able to look up call records through his online account, which is how he provided us with the information regarding time call and duration.

20. Judge Foster also confirmed many of these details. Foster indicated that on Thursday, September 26, 2019, he called Matt Davenport and asked about having lunch. Matt Davenport responded that he was at the restaurant and Foster should come over. According to Foster, the topic of conversation turned to Gerlach, and Matt Davenport mentioned that an employee had photographs of Gerlach out drinking. Foster remembered that the employee (the Photographer) then showed him the photographs, as well as the video of Gerlach chugging a drink. Foster said that he did not initially ask for the photos but was “very troubled” by them. Foster reported that, after driving a few blocks away, he changed his mind, turned around, and went back to the restaurant. Foster said he then asked the Photographer to AirDrop the photos and video to him. Foster said he did not recall if he introduced himself as a judge but said he generally does not do so, since it can be intimidating.¹⁸ The Photographer confirmed that the photos and video he AirDropped to Foster are the same photos and video that appeared in the media reports.

¹⁸ We believe that either Matt Davenport or Foster introduced Foster as a judge. The Photographer did not know Foster’s name, but he knew he was a judge. The fact that the Photographer had that information, without knowing Foster’s name, indicates that he was likely introduced to Foster as a judge. Davenport says that he is not sure if the Photographer is or if Foster knows that he is



21. Foster said that, after reviewing the photos again, he felt he had a duty to notify the ECU Board of Trustees. Foster said he “arranged communication to the Board of Governors and Board of Trustees.” Specifically, Foster said he has “a friend who knows the right people to send the photos to.” Foster stated that he went to Best Buy, bought a USB drive, and transferred the photos to the drive. Foster said he did not email or AirDrop the images. Foster did not send the photos to the media and stressed he did not want to damage ECU’s reputation. He said that he could not recall how he got the files from his phone to the USB drive without emailing them or AirDropping them and could not explain it. Foster gave the USB drive to his friend, but declined to say who that person was. When asked if that person was Romary, Foster took a long pause and said, “I said I’m not going to tell you who I gave the photos to.” Foster said he did not speak to anyone on the Board of Visitors or the Board of Governors about the photos. He spoke to a couple members of the ECU Board of Trustees about Gerlach, but he declined to disclose their identities. Foster declined to let us see his cell phone to verify any of these details. During a brief second interview, when provided the opportunity again to say whom he gave the USB drive to, Foster again declined. We also sent an email asking him to identify the person he gave the photos to prior to the completion of this report, but we have not yet received a response.

D. Peter Romary Investigation

Findings

22. We contacted Romary since both Matt Davenport and Foster, the two people known to have knowledge of the Images beyond the Photographer at that time, each indicated that they spoke separately spoke to Romary on Sunday, September 29, the day the Images were released. When we interviewed Romary, he provided us with information about his professional background and training. He indicated that he first learned of the incident with Gerlach on the social media site “Old Row Pirates.” Romary said that, on Sunday, September 29, he saw a video of Gerlach talking to a blonde woman in a bar.¹⁹ Romary explained that he was in the United Kingdom that day and that he called Matt Davenport. According to Romary, Matt Davenport said everyone was talking about Gerlach.²⁰ Romary also stated that he talked to Foster on Sunday, September 29. At first, Romary said that Foster mentioned being disturbed by photos he had seen of Gerlach. Later, however, Romary said he was unsure whether the topic of Gerlach even came up during his

¹⁹ This video was taken at Sup Dogs and is believed to be from a different night. Gerlach appears to be wearing a different shirt than he is in the other videos from the evening of September 25. Additionally, Jeannine Hutson indicated that she knew someone who was there when that video was filmed, and it was on a different night. The video was posted on Instagram on September 25, 2019, at 11:35 a.m. (EDT), before the time of the events that are the subject of this investigation.

²⁰ Matt Davenport confirmed that he teaches a Criminal Justice class at ECU on Mondays, Wednesdays, and Fridays. Matt Davenport said that, on Friday, September 27, many students were talking about Gerlach being out drinking that week.



conversation with Foster on September 29. Romary then explained that, late at night UK time, he saw the story about Gerlach on WITN.

23. Romary stated that he did not believe the Images had been pulled together and provided to the media as part of a “smear effort.” Romary said all the Images were already available online when WITN posted the story Sunday morning.²¹ Furthermore, Romary specifically stated he had not seen the email that was sent to the media, or materials sent to the Board of Governors. Rather, Romary said he had been retained by the Fraternal Order of Police and the Police Benevolent Association to investigate the incident, since, according to Romary, Gerlach had alleged police officers had “set him up.”²²

24. During our interview, Romary stated that Gerlach’s conduct was “between he and his wife,” language very similar to that used in the First Email. As part of his investigation, Romary said that he had a former “vice officer” review the photos. Romary claimed not to have shared his analysis of the photos with anyone, including his clients, before speaking with us on October 18. However, Romary’s assertions to us significantly tracked those of the First Email sent on September 29. During our interview, Romary said that, “if you look at the photos, her hands are right in his groin”; in other words, Romary explained that Gerlach “is getting a handjob through his pants.” The First Email said, “You cannot see her hands, they are not on her legs, they are not on the bar, perhaps one of the pictures others were taking or those I have don’t leave much to the imagination.” The First Email also captioned this photo “handjob.” Regarding another photo, Romary said that Gerlach was “holding [the Blue-Shirted Woman] tightly,” not trying to get past her. The First Email then states that Gerlach “grabbed [the Blue-Shirted Woman] by the back of her neck and the hair; it was forceful...” Romary said that he had not seen any emails from johnqpublicatecu@gmail.com. Romary declined to identify the vice officer he showed the photos to and who helped produce this analysis as the former vice officer is now his client. Romary also declined to let us examine his cell phone to verify any of these details of his communications.

25. Romary offered that Board of Governors member Thomas Fetzer is publicly known to be a client of his. Romary declined to disclose whether any other member of the Board of Governors are clients. Romary explained that Thomas Fetzer hired him to conduct an investigation

²¹ Our investigation does not support these statements. First, the only Images we are aware of being published prior to September 29, 2019 were videos of Gerlach with a woman at Sup Dogs (posted on the morning of September 25 from a prior date), and the video of him dancing at 5th Street Annex. Additionally, to our knowledge, WITN did not publish any photos or videos until the afternoon of Sunday, September 29.

²² We spoke with an executive of the North Carolina Police Benevolent Association, who advised us that while the PBA has used Romary in the past, they did not employ him to investigate or report on anything in connection with this incident. Romary could have been retained by a local Greenville representative of the Police Benefit Association or the FOP. Romary filed a petition to gain access to street camera footage on behalf of the PBA and FOP on October 25, 2019.



into an applicant for Chancellor of Western Carolina University. Romary said that Thomas Fetzer only provided Romary with the name of the applicant, and he investigated from there.

26. Romary said that he had “sort of” received complaints and forwarded them to the Board of Governors. He said that he had a former law partner who knew of an ECU faculty member who had a grievance and he gave it to Romary who conveyed it to the Board. The faculty member did so because the faculty member knew of Romary’s relationship with Harry Smith and what he did in connection with the Western Carolina chancellor applicant²³. He indicated that is the only complaint he has forwarded. Romary said he did not know of the validity of the complaint and proceeded to explain it had to do with issues in OIED²⁴ and embezzlement. The faculty member was concerned about retaliation so he spoke to Harry Smith about this. Romary thinks that the investigating firm may be Womble Bond Dickinson.²⁵

27. Fetzer previously hired Romary to investigate a matter related to the Board. Accordingly, we asked Mr. Fetzer to provide us with any documents or data he has pertaining to UNC System business, to include the events under investigation, from January 1, 2019 through the present. In this investigation Mr. Fetzer provided approximately 15 emails related to ECU. On October 26, we sought to confirm that he does not have any other responsive texts, emails, documents or data but had not heard from him by the time of the submission of this report.

28. Romary offered that he knew many members of the ECU Board of Trustees and the UNC Board of Governors, including Vern Davenport, Fielding Miller, Max Joyner, Phil Lewis, Angela Moss, Leigh Fanning, Philip Byers, Leo Daughtry, James Holmes, Thomas Fetzer, Harry Smith, Thomas Goolsby, David Powers, Michael Williford, Steven Long, and Pearl Burris-Floyd. On his own, Romary added that he has known Smith “for a long time.”

29. When we asked Romary if had a written engagement letter with the Police Benevolent Association or Fraternal Order of Police, he became belligerent and stated he would talk to Betsy DeVos about us and this investigation. He thinks our entire investigation is ridiculous, and that Gerlach has maligned law enforcement officers with talk of a “set-up.”²⁶

On Saturday, October 26, 2019, Gerlach resigned as Interim Chancellor and we were asked to produce a report immediately to reflect the findings to that date.

²³ Romary indicated that this chancellor applicant had committed 7 counts of wire fraud for lying on the application.

²⁴ OIED is believed to be Office of Innovation and Economic Development.

²⁵ While Womble Bond Dickinson was retained to investigate a complaint by a faculty member at ECU that was submitted to Harry Smith, this was not the substance of that complaint.

²⁶ Mr. Gerlach, through legal counsel, confirmed he was not asserting law enforcement was engaged in a “set-up.”